

# **The Alabama Claims Arbitration**

## **(An important early arbitration)**

by  
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Despite its declared neutrality with regard to the US Civil War, the United Kingdom had not prevented British ports from being used to outfit ships in the Confederate Navy (the South) during the course of that war. The most notorious example was the Confederate ship known as the “Alabama” which was believed to have sunk over 60 Union ships before it was finally sunk.<sup>1</sup> After the Union (the North) won the Civil War, the US government was understandably anxious to hold the UK accountable for what was widely perceived to be a very serious violation of the international law of war and peace. More surprising is the fact that the UK was willing, both to endorse a clear codification of the law applicable to the duties of a neutral power towards belligerents, and to submit the Alabama claims to binding international arbitration. The 1871 Treaty of Washington<sup>2</sup> between the US and the UK did exactly this.

The sole purpose of the treaty was to settle all US claims against the UK based on the so-called “Alabama” claims via international arbitration. The treaty established a five-person Tribunal of Arbitration, with arbitrators named by the US, the UK, the King of Italy, the President of Switzerland and the Emperor of Brazil.<sup>3</sup> The treaty also set out a clear codification of the international law governing the duties of neutral states in wartime.<sup>4</sup>

In their decision, the arbitrators concluded with regard to the “Alabama” that two of the three agreed rules had been violated and, with regard to the “Florida”, that all three of those rules had been violated.<sup>5</sup> The arbitrators

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<sup>1</sup> See William R. Slomanson, *FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW* (1990) at 327.

<sup>2</sup> *TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE AMICABLE SETTING OF ALL CAUSES OF DIFFERENCE BETWEEN THE TWO COUNTRIES*, signed at Washington, 8 May, 1871, [1871 TREATY OF WASHINGTON] Clive Parry (Ed.), *THE CONSOLIDATED TREATY SERIES* (Oceana Publications, Inc., Dobbs Ferry, New York, 1977), Vol. 143, p. 145.

<sup>3</sup> “Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty’s Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims, shall be referred to a Tribunal of Arbitration to be composed of 5 Arbitrators to be appointed in the following manner, that is to say: one shall be named by Her Britannic Majesty; one shall be named by the President of the United States; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.” 1871 TREATY OF WASHINGTON, *supra*. note 2, Article I.

<sup>4</sup> The following codification of law was set out in Article VI of the Treaty of Washington:

### ART. VI

In deciding the matters submitted to the Arbitrators they shall be governed by the following 3 rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles

awarded the United States the then-staggering sum of \$15,500,000 in gold.<sup>6</sup> The British government cannot have been too surprised by this verdict, as it surely knew that it had violated the rules of neutrality as formulated and agreed to in the Treaty of Washington. One unusual clause of the treaty sets out the nuanced position of the UK on the issue of the applicable law.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provisions for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.<sup>7</sup>

By its own terms, the Treaty of Washington's codification of the duties of a neutral state under international law set out rules to be observed in the future as well a standard to be applied to past conduct of the UK. In this sense it was intended to be semi-legislative. This is clear from the treaty language stating that:

... the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of the other maritime Powers and to invite them to accede to them.<sup>8</sup>

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of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:

#### RULES

A neutral Government is bound -

First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the bas of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, recruitment of men.

Thirdly. To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligation and duties.

1871 TREATY OF WASHINGTON, *supra*. note 2, Article VI. (emphasis added)

<sup>5</sup> *DECISION AND AWARD* Made by the tribunal of arbitration constituted by virtue of the first article of the treaty concluded at Washington the 8<sup>th</sup> of May, 1871, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, reported in John Bassett Moore, ed. HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY ("HEREINAFTER ALABAMA CLAIMS ARBITRATION") (Washington, Government Printing Office, 1898), Vol. 1, p. 653, 656-657.

<sup>6</sup> "The tribunal making use of the authority conferred upon it by Article VII. Of the said treaty, by a majority of four voices to one, awards to the United States a sum of \$15,500,000 in gold, as the indemnity to be paid by Great Britain to the United States, for the satisfaction of all the claims referred to the consideration of the tribunal, conformably to the provisions contained in Article VII. Of the aforesaid treaty." ALABAMA CLAIMS ARBITRATION, at 658-659.

<sup>7</sup> 1871 TREATY OF WASHINGTON, *supra*. note 2, Article IV.

<sup>8</sup> *Id.*